

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing and the agency decides that prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office. The Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 411001 et seq.) publication of the Notice of Supplemental Proposed Rulemaking in the *Register* before holding any oral proceedings (A.R.S. § 411022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

Notice of Proposed Rulemaking: 4 A.A.R. 77, January 9, 1998.

2. Sections Affected

R12-4-309

Rulemaking Action

Amend

3. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. § 17-102

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Susan L. Alandar

Address: Arizona Game and Fish Department
2221 West Greenway Road DOAS
Phoenix, Arizona 85023

Telephone: (602) 789-3289

Fax: (602) 789-3299

Closing date for written comments: August 14, 1998

5. An explanation of the rule, including the agency's reasons for initiating the rule:

This rule prohibits people who do not have an elk tag or javelina tag from hunting for wildlife with a weapon which is legal for hunting these animals in units where elk seasons or general javelina seasons are open.

The rule has applied with minimal exceptions to all units where elk seasons are open. The proposed changes would restructure the rule so that it lists the units where the rule applies during elk seasons. This is so that new units where elk seasons may be opened in the future will not be covered by the rule unless a specific decision is made to add the unit to the rule. The rule would continue to apply to all elk units currently affected by the rule except units 12A, 12B, 16A, 21, and 44A. (The boundaries for all management units are established in R12-4-108.) In addition, the current exemption from the rule for *general* elk seasons in the southern parts of units 22, 23 and 27 would be extended to *all* elk seasons (muzzleloader, archery, juniors-only, etc.) as established in R12-4-318.

The rule was originally promulgated to further deter hunters from participating in the unlawful practice of "buddy hunting." Buddy hunting is where one hunter shoots an animal for another hunter and the shooter is usually not permitted to hunt for the animal killed. Such actions increase the total harvest of the resource. The number of permits made available is based upon total desired harvest and the expected factor for the percentage of successful hunters. When the success ratio goes up, the number of available permits must go down. That reduction in permit numbers has three affects: it takes away hunting opportunity for legal hunters, reduces Department revenue, and reduces indirect revenue from hunting to the Arizona economy.

The tendency to "buddy hunt" seems to increase among otherwise law abiding hunters in situations where the animal being hunted occurs in large concentrations and high permit numbers are offered for any animal or antlerless animals (javelina and elk). Elk hunters are further motivated to take extra steps to go home with a filled elk tag because elk is a difficult hunting permit to acquire through the big game permit-tag draw system and once drawn the opportunity to shoot an elk is high, with firearms hunter success for elk exceeding 55%. The rule also offers a higher quality hunting experience for those obtaining elk and javelina hunting permits by disallowing other rifle, muzzle loader or archery hunters from being in the field at the time of these hunts. Archery hunters in particular, but also early season bull elk hunters, value having the hunting field restricted by the rule.

Notices of Supplemental Proposed Rulemaking

The 1996 review of this rule resulted in the decision to explore exempting some management units from the rule during elk hunts to increase hunting opportunity for other hunters when this can be done without decreasing value for elk hunters. The proposed changes acknowledge that the rule is needed most in management units where elk herds are large and/or dispersed through most of the management unit.

Conversely, where elk have expanded at low densities into game management units in Arizona and elk populations are very small and/or occur in small geographic areas the rule is not needed. The lack of need is because the combination of high numbers of elk and elk hunters in the same place does not occur. Also, for units like 16A and 21, the allocation of elk permits is very small and the size of area where elk occur is also very small, making it easy for enforcement officers to monitor hunter compliance with existing regulations against "buddy hunting".

Elk hunts have been established in some of the units excluded from the rule with the intent to severely reduce or eliminate the elk population (12A, 12B, 16A south, and 44A). In other cases very few elk permits are offered to hunt small elk populations which occur in small geographic areas within the units (16A north and 21), and lastly there are units with high elk populations in part of the units but low density to no elk or elk hunters in other parts. These are recommended for exclusion from the rule (22 south, 23 south and 27 south). Restructuring the rule to list the units affected will also exclude any units which may be opened for the first time to elk hunting in the future. The list of units included in the draft rule for elk hunts are all located in north central Arizona in Yavapai, northern Gila, southeastern Mohave, Coconino, Apache, Navajo and northern Greenlee counties. Elk are numerous in these units or the elk herds are widely dispersed through much of the unit.

The reason for the exclusion of units or portions of units not listed in the rule is to reduce the impact of restricting other hunting in these units during scheduled elk hunts when the number of hunters afield in pursuit of other wildlife far exceeds the number of permitted elk hunters and the likelihood of hunters encountering elk in large herds is low. For instance, the North Kaibab (12A) located on the north rim of the Grand Canyon is a very popular archery deer unit. More than 2,500 hunters archery hunt deer in this unit every year. Were R12-4-309 in effect the scheduling of an elk hunt with 25-50 permits during the archery deer hunt would disallow hundreds of archery deer hunters from hunting in that unit.

6. An explanation of the substantial change which resulted in this supplemental notice:

Due to public comment and a "petition for rule" received during this rulemaking process, the Commission is proposing to remove new language from the Proposed Notice of Rulemaking in subsection (A)(1) to exempt management units 17A, 17B, 18A, 18B, 19A, and 19B from the restrictions in R12-4-309 during general elk seasons. These units would be in addition to the management units already proposed for exemption in this rule process and which therefore did not and do not appear in the proposed rule: 12A, 12B, 16A, 21, and 44A.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The preliminary summary of the economic, small business, and consumer impact:

Exempting additional units from the restrictions in R12-4-309 will extend hunting opportunity in those units to persons other than elk hunters. The impact is not expected to be great but potential benefits would appear to outweigh potential negative impact.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Tice Supplee, Game Branch Chief
 Address: Arizona Game and Fish Department
 2221 West Greenway Road
 Phoenix, Arizona 85023
 Telephone: (602) 789-3350
 Fax: (602) 789-3929

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how person may request an oral proceeding on the proposed rule:

Date: September 19, 1998
 Time: 9 a.m.
 Location: Little America
 2515 Butler Avenue
 Flagstaff, Arizona
 Nature: This public hearing is to discuss the proposed changes to the rule.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules:

None.

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13. The full text of the changes follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

Section

R12-4-309. Restricted Hunts

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

R12-4-309. Restricted Hunts

- A. With the exceptions listed in subsection (C) of this rule, hunt areas established by Commission order for the following seasons are closed to hunting by all persons not possessing the valid big game tag required for that season:

1. All elk seasons within the following units as described in R12-4-108:

Unit 1.
Unit 2B.
Unit 2C.
Unit 3A.
Unit 3B.
Unit 3C.
Unit 4A.
Unit 4B.
Unit 5A.
Unit 5B.

Unit 6A.

Unit 6B.

Unit 7.

Unit 8.

Unit 9.

Unit 10.

Unit 17A.

Unit 17B.

Unit 18A.

Unit 18B.

Unit 19A.

Unit 19B.

Unit 22, except the portion in the Mazatzal Mountains.

Unit 23, except the portion in the Sierra Ancha Mountains.

Unit 27, except the portion lying south of the line beginning at the New Mexico state line and Blue River, southwesterly along Blue River to its juncture with Strayhorse and Bear Canyon Trails, southwesterly on Strayhorse and Bear Canyon Trails to Forest Road 217, north on Forest Road 217 to the San Carlos Indian Reservation.